

## HUMAN SERVICES BOARD

# INTRODUCTION

## DISCUSSION

The parties agree that the petitioner's son began working on December 13, 2007. He turned eighteen on February 18, 2008. The Department agrees that under the Food Stamp

regulations his income from employment was exempt from consideration before his eighteenth birthday. The petitioner concedes that the earned income of household members who are eighteen and who are not students must be counted in determining financial eligibility.

In March 2008 the Department received electronic information ("hit") from the Department of Employment and Training (DET) that the petitioner's son was working. After receiving the information from DET, the petitioner's caseworker sent the petitioner a request for verification of that employment, which the petitioner returned in a timely manner, and with accurate information. Based on the amount of the son's wages, combined with the petitioner's other income, the Department terminated the petitioner's Food Stamps effective April 1, 2008.

The petitioner appealed this decision on April 15, 2008. A hearing was held on May 15, 2008. At that time the petitioner, who appeared with an attorney, initially maintained that the Department had miscalculated some of *her* income from child support. The parties agreed to continue the matter to allow the Department to review the petitioner's income.

A telephone status conference was held on June 9, 2008, at which time the petitioner reported she was in the process of switching attorneys. Another status conference was held on July 14, 2008. At that time the parties informed the Board that the amount of the petitioner's household income was not in dispute, and that the remaining issue was whether the petitioner had timely reported her son's employment, and whether there had been an overpayment to the petitioner as a result of any untimely reporting. The parties agreed to continue the matter for the Department to determine whether a compromise of any overpayment was appropriate.

At a telephone status conference on September 8, 2008 the parties reported that the issues had boiled down to agency vs. household error in regard to an overpayment of benefits paid in March 2008 and the son's status as a student after that date in regard to the petitioner's ongoing eligibility after March 2008. The parties agreed to another continuance to exchange further information regarding those issues.

Following the unavailability of the petitioner's legal representative at a status conference on October 6, 2008, at another status conference on December 12, 2008 the parties informed the hearing officer that the only remaining issue

was agency vs. household error regarding the overpayment of benefits in March 2008.

A hearing on this issue was held on January 15, 2009. The parties agreed on the record that as a result of the petitioner's son turning eighteen on February 20, 2008 the petitioner had been overpaid Food Stamps for the period February 20 through March 31, 2008. The parties agreed that the petitioner's son had started working on December 13, 2007, but that his wages were exempt from consideration until the date he turned eighteen.

The petitioner has maintained from the outset that she had informed the Department both prior to and at her interview in December 2007 that her son was going to begin a job. In her testimony, the petitioner's caseworker alleged that according to the written case file and her own recollection, she had not received this information prior to the DET "hit" in March 2008. The caseworker admitted, however, that her district office does not practice and maintain a system of memorializing phone contacts with clients, and that she, herself, could not be sure that the petitioner had not called the district to report this information or had not mentioned it in her interview in December 2007.

Upon the request by the hearing officer for a clarification of its position, the Department stated that it was not alleging that the petitioner was being untruthful in her allegation that she had reported her son's employment to the Department in a timely manner, and that it was basing its case solely on the facts that its written case record did not reflect receipt of such a call and that the caseworker could not specifically remember receiving such information from the petitioner. The Department conceded that it had no other evidence regarding the petitioner's truthfulness or prior record of providing accurate and timely information.

At that point the hearing officer pointedly ruled that the Department had not made a *prima facie* evidentiary showing that the petitioner was not credible. The hearing officer concluded the hearing and directed the Department to file a written argument within a week if it disputed this ruling. To date, the Board has not received any further argument from the Department.<sup>1</sup>

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<sup>1</sup>The Board's records show that on January 16, 2009, the Department's attorney requested a copy of the oral record of the hearing, but this request was not accompanied by any request to continue the matter.

ORDER

The Department's decision is reversed. The overpayment must be considered the result of the Department's administrative error.

REASONS

Under the Food Stamp regulations, the Department is required to "establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive." F.S.M. § 273.18(a). The regulations also provide: "A claim shall be handled as an administrative error claim if the over issuance was caused by State agency action or failure to take action . . ." F.S.M. § 273.18(a)(2). If the household is continuing to receive Food Stamps, the required repayment is the greater of ten percent of the household's monthly allotment or \$10 per month when the claim is based on administrative error, but twenty percent or \$10 when caused by household error. F.S.M. § 273.18(g)(4). In addition, procedures exist for the Department to "compromise" the amount of certain administrative error claims.

In this case, the petitioner admits an overpayment occurred due to her son's wages not being considered once he turned eighteen. However, she maintains that it was the

Department's error that his wages were not considered in a timely manner. The petitioner has maintained from the outset that she reported in and prior to December 2007 that her son was working. If that is the case, the Department's failure to timely act on this information would have to be considered the "error" that led to any subsequent overpayment of benefits.

Human Service Board Rule No. 1000.3(0)(4) provides:

Burden of proof. The burden of proving facts alleged as the basis for decisions to terminate or reduce benefits, services or assistance. . . shall be on the office or department by a preponderance of the evidence, unless otherwise provided by law. Otherwise, the burden of proof by a preponderance of the evidence shall be on the appellant.

In light of the petitioner's allegations, the Department's determination that the overpayment resulted from the petitioner's "error" requires a *finding* that the petitioner has been untruthful or mistaken in her allegations. A fair hearing involving a petitioner's credibility is *de novo*, but not *ab initio*. The Department has the burden of establishing at least *some* evidentiary basis in support of *its* conclusion that this (or any) petitioner is not credible. It cannot, as it did here, simply note the absence of this information in the record and the caseworker's admittedly-less-than-confident recollection

that such a conversation did not occur. This is especially so in a case involving a district office with no reliable policy or protocol for acknowledging and memorializing client telephone contacts.<sup>2</sup> As a matter of law (and basic respect for the dignity of its clients) the Department cannot require petitioners to request fair hearings in order to prove that they are *not* lying or mistaken about events they clearly allege happened.

Inasmuch as the Department presented no reliable evidence that the petitioner in this case is not credible, it cannot be concluded that it has met its burden of proof in the matter.

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<sup>2</sup>See Fair Hearing No. 21,115.